_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF INDIVIDUALS, CERTAIN MEMBERS OF PASS-THROUGH ENTITIES, AND TRUSTS AND ESTATES; ALLOWING INDIVIDUAL TAXPAYERS TO ELECT AN ALTERNATIVE METHOD OF DETERMINING TAX LIABILITY; PROVIDING THAT THE ELECTION IS IRREVOCABLE; GENERALLY REDUCING TAX LIABILITY UNDER THE ALTERNATIVE METHOD; PROVIDING ADDITIONAL INCOME TAX RATE REDUCTIONS UNDER THE ALTERNATIVE METHOD IF INDIVIDUAL INCOME TAX COLLECTIONS IN A FISCAL YEAR EXCEED THE AMOUNT ESTIMATED BY THE LEGISLATURE BY A CERTAIN PERCENTAGE; REQUIRING THE STATE TREASURER TO CERTIFY INCOME TAX COLLECTIONS FOR THE PURPOSE OF PROVIDING ADDITIONAL TAX RELIEF; ELIMINATING THE DEDUCTION FOR FEDERAL INCOME TAXES PAID FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; ELIMINATING CERTAIN TAX REDUCTIONS, DEDUCTIONS, AND CREDITS FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; DISALLOWING THE CARRYFORWARD AND CARRYBACK OF CERTAIN CREDITS FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; MAINTAINING THE TAX EXEMPTION OF AMOUNTS CONTAINED IN CERTAIN SAVINGS ACCOUNTS FOR TAXPAYERS ELECTING THE ALTERNATIVE METHOD OF TAXATION; ALLOWING MARRIED TAXPAYERS WHO ELECT THE ALTERNATIVE METHOD OF TAXATION AND WHO FILE SEPARATE MONTANA RETURNS TO USE FEDERAL DETERMINATIONS OF ADJUSTED GROSS INCOME IN DETERMINING MONTANA ADJUSTED GROSS INCOME FOR CERTAIN INCOME ITEMS; AMENDING SECTIONS 7-21-3710, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-125, 15-30-126, 15-30-128, 15-30-129, 15-30-130, 15-30-135, 15-30-137, 15-30-142, 15-30-154, 15-30-156, 15-30-163, 15-30-164, 15-30-166, 15-30-180, 15-30-182, 15-30-183, 15-30-184, 15-30-185, 15-30-186, 15-30-187, 15-30-189, 15-30-201, 15-30-313, 15-30-1112, 15-30-1113, 15-31-131, 15-31-133, 15-31-134, 15-31-137, 15-31-151, 15-31-162, 15-32-109, 15-32-115, 15-32-201, 15-32-202, 15-32-303, 15-32-402, 15-32-404, 15-32-602, 15-32-603, 15-32-610, 15-32-701, 15-32-702, 15-32-703, 15-61-202, 15-62-207, 15-62-208, 15-63-202, 17-6-316, 33-22-2007, 80-12-211, 90-8-202, AND 90-10-303, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, during the 2003 Legislative Session, the Montana Legislature, in Senate Bill No. 407

(Chapter 544, Laws of 2003), revised the individual income tax system by reducing marginal income tax rates and collapsing individual income tax brackets; and

WHEREAS, the intent of the revision, among other things, was to eliminate the perception that Montana was a high income tax state;

WHEREAS, the new top marginal tax rate applies to a low level of taxable income;

WHEREAS, Senate Bill No. 407 eliminated one-half of the deduction for federal income taxes paid;

WHEREAS, the actual effect of Senate Bill No. 407 is to maintain a relatively high progressive income tax system;

WHEREAS, individual income tax collections have exceeded the Legislature's expectations since the Legislature adjourned in April 2005; and

WHEREAS, individual income tax collections are expected to increase significantly during the 2009 biennium; and

WHEREAS, wages in Montana are still among the lowest in the nation; and

WHEREAS, numerous economic studies have shown that there is a strong correlation between highly progressive tax systems and low wage growth; and

WHEREAS, other economic studies have shown that highly progressive tax systems inhibit income growth; and

WHEREAS, the adverse relationship between high taxes and low-paying jobs is strong evidence that cutting taxes would be more significant for wage earners than it would be for the wealthy; and

WHEREAS, although Montana is sparsely populated, it has one of the most complicated income tax systems in the nation; and

WHEREAS, the Montana Legislature has continued to complicate the individual income tax system with new credits, deductions, and exclusions from income; and

WHEREAS, the goals of the Montana Legislature include promoting economic growth, creating better-paying jobs, and establishing a more equitable tax system; and

WHEREAS, the Montana Legislature firmly believes that general across-the-board tax reductions for all Montana citizens and simplification of the tax system are much more effective than targeted tax breaks in achieving those goals; and

WHEREAS, the Montana Legislature wants to ensure that taxes do not arbitrarily increase for any taxpayer in the process of simplifying and revitalizing the state's tax structure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Alternative method for determining tax.** (1) An individual, an estate, or a trust may elect to determine state income tax liability under the provisions of [sections 1 through 4]. Except as provided in [section 4] and subsections (2) through (4) of this section, taxable income is determined as provided in this chapter. A taxpayer who elects to determine the taxpayer's liability pursuant to this section is not eligible for adjustments or credits that are specifically referred to in this section.

(2) Except as provided in subsections (2)(a) through (2)(j), for a taxpayer who elects to be taxed under the provisions of [sections 1 through 4], adjusted gross income is the taxpayer's adjusted gross income determined under 15-30-111 and includes unemployment compensation. Notwithstanding the provisions of 15-30-111, the following items may not be used to reduce federal adjusted gross income in determining Montana adjusted gross income:

(a) interest income referred to in 15-30-111(2)(b) earned by a taxpayer 65 years of age or older;

(b) except as provided in 15-61-202, principal and income in a medical care savings account referred to in 15-30-111(2)(j);

(c) except as provided in 15-63-202, principal and income in a first-time home buyer savings account referred to in 15-30-111(2)(k);

(d) except as provided in 15-62-207, contributions and earnings withdrawn from a family education savings account referred to in 15-30-111(2)(l);

(e) deposits in a Montana farm and ranch risk management account referred to in 15-30-111(2)(o);

(f) retirement disability benefits referred to in 15-30-111(6);

(g) contributions to a family education savings program referred to in 15-30-111(7) and 15-62-207;

(h) the loan payment received by a health care professional referred to in 15-30-111(8);

(i) the additional deduction for expenditures for the purchase of recycled material under 15-32-610; and

(j) the deduction for a land sale to a beginning farmer under 80-12-211.

(3) In determining net income under 15-30-121 and under other provisions of law, a taxpayer who elects to be taxed under [sections 1 through 4] may not deduct:

(a) federal income tax paid during the tax year under 15-30-121;

(b) political contributions under 15-30-121;

(c) expenses for organic and inorganic fertilizer under 15-30-121 and 15-32-303;

(d) a donation of a computer or other technological equipment or apparatus to a school under 15-30-126;

(e) a donation to the veterans' services account under 15-30-154; and

(f) contributions to the child abuse and neglect prevention program under 15-30-156.

(4) A taxpayer who elects to be taxed under the provisions of [sections 1 through 4] may not claim the following tax credits:

(a) the credit for energy-conserving investments or expenditures as provided in 15-30-125 and 15-32-109;

(b) the credit for the expense of caring for certain elderly family members under 15-30-128;

(c) the credit for providing disability insurance for employees under 15-30-129;

(d) the credit for day-care facilities under 15-30-130;

(e) the credit for alternative fuel motor vehicle conversion under 15-30-164;

(f) the credit for preservation of historic buildings under 15-30-180, including any carryforward of the credit;

(g) the credit for each new employee at a business in an empowerment zone under Title 7, chapter 21, part 37, and 15-30-182, including any carryback or carryforward of the credit;

(h) the equity capital tax credit under 15-30-184 and Title 90, chapter 10, including any carryforward of the credit;

(i) the credit for dependent care assistance and referral services under 15-30-186, including any carryforward of the credit;

(j) the credit for contributions to the developmental disability services account under 15-30-187;

(k) the credit for a physician practicing in a rural area under 15-30-188 through 15-30-191;

(l) the credit for a geothermal system allowed under 15-32-115;

(m) the credit for the installation of an energy system under 15-32-201, including any carryforward of the credit as allowed under 15-32-202;

(n) the commercial or net metering investment credit under 15-32-401 through 15-32-406, including any carryforward of the credit as allowed under 15-32-404;

(o) the credit for investment in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material under 15-32-601 through 15-32-604;

(p) the oilseed crush facility credit under 15-32-701;

(q) the biodiesel production facility credit under 15-32-702;

(r) the biodiesel blending and storage credit under 15-32-703;

(s) the infrastructure credit under the provisions of 17-6-316, including any carryback or carryover of the credit; and

(t) the tax credit for a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company under the provisions of Title 90, chapter 8, part 2, including any carryback or carryover of the credit.

NEW SECTION. **Section 2. Election to determine tax liability under alternative method -- effect of election -- rules.** (1) On or before the due date, including extensions, of a return for a tax year beginning after December 31, 2007, a taxpayer may, on forms that the department prescribes, file an election to be taxed under the provisions of [sections 1 through 4].

(2) In order to make an election under this section, married taxpayers shall make the election jointly.

(3) An election made under this section is a one-time irrevocable election.

(4) The department shall adopt rules that it considers necessary to administer the alternative method of taxation provided in [sections 1 through 4].

NEW SECTION. **Section 3. Alternative method rate of tax -- reduction in tax rates under certain conditions.** (1) In lieu of the tax rates imposed under 15-30-103 and subject to subsection (2) of this section, the taxable income, as adjusted in subsection (3) of this section, of a taxpayer who elects to determine tax liability under [sections 1 through 4] is taxed for each tax year beginning after December 31, 2007, according to the following schedule:

(a) on the first $2,300 of taxable income or any part of that income, 0.9%;

(b) on the next $1,800 of taxable income or any part of that income, 1.8%;

(c) on the next $2,100 of taxable income or any part of that income, 2.8%;

(d) on the next $2,200 of taxable income or any part of that income, 3.6%;

(e) on the next $5,600 of taxable income or any part of that income, 4.5%;

(f) on the next $30,000 of taxable income or any part of that income, 5.7%;

(g) on any taxable income in excess of $44,000 or any part of that income, 6.2%.

(2) If, in any fiscal year beginning with fiscal year 2009, individual income tax collections, excluding

amended returns and audit collections attributable to a tax year that began before the tax year in which the fiscal year began, are at least 3% more than estimated by the legislature, exclusive of the amount attributable to audit collections, as provided in 5-5-227, and adjusted as provided in [section 66] for individual income tax legislation in effect for that fiscal year, then beginning January 1 of the calendar year immediately following the end of that fiscal year, the tax rates in effect under subsection (1) during the prior tax year must be reduced by the percentage amount that individual income tax collections for that fiscal year exceeded the amount estimated by the legislature.

(3) By November 1 of each year, the department shall multiply the bracket amounts contained in subsection (1) by the inflation factor, as defined in 15-30-101(11)(b), for that tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that tax year and must be used as the basis for imposition of the tax in subsection (1) or (2).

NEW SECTION. **Section 4. Adjustments related to federal filing status in determining tax liability under alternative method.** Notwithstanding other provisions of law, the following adjustments are allowed in determining tax liability under [sections 1 through 4]:

(1) Married taxpayers filing a joint federal return who are allowed a deduction for a capital loss under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, then the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each Montana return.

(2) In the case of passive activity and rental income losses, married taxpayers filing a joint federal return and who file separate Montana tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, then the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each Montana return.

(3) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(4) Married taxpayers filing a joint federal return who are required to include part of their social security

benefits in federal adjusted gross income may use the amount calculated for federal taxable social security benefits when they file separate Montana income tax returns. If the federal taxable amount of social security benefits is clearly attributable to one spouse, then the amount attributable to that spouse must be shown as taxable income for that spouse's return; otherwise, the federal taxable amount of social security benefits must be split equally on each Montana return.

(5) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be split equally on each Montana return.

Section 5. Section 7-21-3710, MCA, is amended to read:

"7-21-3710. Tax credits for employers in empowerment zone. (1) ~~There~~ Except as provided in [section 1], there is allowed to an employer a credit against taxes imposed under 15-30-103, 15-31-121, 15-31-122, or 33-2-705 for an increase in net employees as provided in this section.

(2) To be eligible for a credit under this section, the owner of a business located in an empowerment zone:

(a) shall conduct a business in a facility within the empowerment zone in which retail sales of tangible personal property, other than that manufactured in the business facility, are not in excess of 10% of the business conducted in the facility, whether measured by number of employees doing retail sales, by square footage, or by dollar volume; and

(b) shall increase employment in the empowerment zone with employees:

(i) who are employed for at least 1,750 hours a year in permanent employment intended to last at least 3 years;

(ii) who were not employed by the business in the preceding 12 months;

(iii) at least 35% of whom were residents of the county in which the empowerment zone is located at the time they were hired by the business;

(iv) who are provided a health benefit plan for employees in accordance with 33-22-1811(3)(d) of which at least 50% of the premium is paid by the business; and

(v) who are paid for job duties performed at the empowerment zone location of the business.

(3) (a) For the purposes of subsection (2)(b)(i), an employee hired in the last 90 days of a year is

considered to be an employee beginning employment in the following year. If an employee terminates employment, a replacement employee may be hired and the credit for the combined length of time may be claimed.

(b) For the purposes of subsection (2)(b)(iii), if an employee for whom a credit was claimed and who counted as an empowerment zone county resident for credit eligibility in either of the immediate 2 preceding years terminates employment, the replacement employee must have been a resident of the county in which the empowerment zone is located at the time the replacement employee is hired.

(4) An employer shall apply for certification to claim a credit under the provisions of this section. The department shall require a report that contains detailed information to determine whether an employer qualifies under subsections (2) and (3). The information must be detailed enough for auditing purposes. The department is authorized to inspect employers applying for certification or who have obtained certification.

(5) The department shall certify to the department of revenue or the state auditor's office, as applicable, whether a business may claim a credit under the provisions of this section as well as how many additional employees qualify and the year of initial employment of qualifying employees."

Section 6. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the ~~purpose~~ purposes of this chapter, including the purposes of the alternative method of determining tax liability under [sections 1 through 4], unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) (i) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year; or

(ii) the tax brackets established in [section 3(1)], but unadjusted by [section 3(3)], in effect on June 30 of the tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics

of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362)~~ 26 U.S.C. 1362, is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity that is:

(a) ~~that is~~ disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) ~~that is~~ a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, ~~(26 U.S.C. 1361(b)(3))~~ 26 U.S.C. 1361(b)(3).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) (a) "Gross income", except as provided in subsection (10)(b), means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, ~~(26 U.S.C. 61)~~ 26 U.S.C. 61, ~~or as that section may be labeled or amended~~, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, ~~(26 U.S.C. 85) as amended~~ 26 U.S.C. 85.

(b) For a taxpayer who elects the alternative method of taxation under [sections 1 through 4], gross income includes unemployment compensation referred to in subsection (10)(a).

(11) (a) "Inflation factor", except as provided in subsection (11)(b), means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(b) For the purposes of [section 3], inflation factor means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2008.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" ~~is as defined~~ has the meaning provided in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" ~~means a limited liability partnership as defined~~ has the meaning provided in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property

or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, ~~(26 U.S.C. 401)~~ 26 U.S.C. 401, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's

beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, ~~(26 U.S.C. 401 through 408)~~ 26 U.S.C. 401 through 408, to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" ~~is as defined~~ has the meaning provided in 45-2-101.

(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(28) "Resident" ~~applies only to~~ means a natural ~~persons~~ person and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any ~~taxable~~ tax year, any person domiciled in the state of Montana and any other person who maintains a permanent place of ~~abode~~ residence within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, ~~(26 U.S.C. 1362)~~ 26 U.S.C. 1362, is in effect.

(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) (a) "Taxable income", except as provided in subsection (32)(b), means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(b) For a taxpayer who elects to determine tax liability under [sections 1 through 4], taxable income means the adjusted gross income of the taxpayer less the deductions and exemptions provided for in this chapter, computed in accordance with the modifications specified in [sections 1 and 4].

(33) (a) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter.

(b) ~~and unless otherwise specifically provided~~ The term does not include a C. corporation unless specifically provided by this chapter."

Section 7. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) ~~There~~ Except as provided in [section 3], there must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first $2,300 of taxable income or any part of that income, 1%;

(b) on the next $1,800 of taxable income or any part of that income, 2%;

(c) on the next $2,100 of taxable income or any part of that income, 3%;

(d) on the next $2,200 of taxable income or any part of that income, 4%;

(e) on the next $2,400 of taxable income or any part of that income, 5%;

(f) on the next $3,100 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $13,900 or any part of that income, 6.9%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that tax year and must be used as the basis for imposition of the tax in subsection (1) of this section."

Section 8. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident. (1) (a) A tax is imposed upon each nonresident equal to the tax computed under 15-30-103 or [section 3] as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident

taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103, [section 3], and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 9. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) except as provided in [section 1], interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) except as provided in [section 1], principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) except as provided in [section 1], principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) except as provided in [section 1], contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) except as provided in [section 1], deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and

51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) ~~A~~ Except as provided in [section 1], a taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

~~(8)~~(7) (a) ~~An~~ Except as provided in [section 1], an individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the

account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) If the account owner elects to determine the account owner's tax liability under [sections 1 through 4], the amount of contributions and earnings in the account before the tax year in which the election is effective may be retained tax-free and any unused portion of that amount withdrawn from the account for qualified higher education expenses is tax exempt. Nonqualified withdrawals are subject to 15-62-208.

~~(9)~~(8) (a) ~~A~~ Except as provided in [section 1], a taxpayer may exclude the amount of the loan payment received pursuant to subsection ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 10. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) must be allowed as deductions in computing taxable income.

(2) (a) An exemption of $1,900 is allowed for all taxpayers.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does

not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $1,900 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of $1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $1,900 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the taxpayer begins; or

(B) is a student.

(b) An exemption is not allowed under this subsection for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson,

daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the tax year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that tax year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103 or [section 3]."

Section 11. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) except as provided in [section 1], federal income tax paid within the tax year, not to exceed $5,000 for each taxpayer filing singly, head of household, or married filing separately or $10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through

(1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year that ended December 31, 1978;

(e) except as provided in [section 1], that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) except as provided in [section 1], contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for~~:~~

~~(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or~~

~~(B)~~ the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer ~~for tax years beginning after December 31, 1996~~;

(h) light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax year;

and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 12. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is $1,580, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of $3,560, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard deduction is twice the amount of the minimum standard deduction for a single return, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of twice the amount of the maximum standard deduction for a single return, as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum

standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest $10. The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103 or [section 3]."

Section 13. Section 15-30-125, MCA, is amended to read:

"15-30-125. Credit for energy-conserving investments. ~~There~~ Except as provided in [section 1], there is a credit against tax liability under this chapter as provided in 15-32-109."

Section 14. Section 15-30-126, MCA, is amended to read:

"15-30-126. Small business corporation -- deduction for donation of computer equipment to schools. ~~A~~ Except as provided in [section 1], a small business corporation, as defined in 15-30-1101, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions."

Section 15. Section 15-30-128, MCA, is amended to read:

"15-30-128. Credit for expense of caring for certain elderly family members. (1) ~~There~~ Except as provided in [section 1], there is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the ~~taxable~~ tax year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of $15,000 or less for an unmarried individual and $30,000 or less for a married individual for the ~~taxable~~ tax year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal-care attendant services and care in a long-term care facility, as defined in 50-5-101, that is licensed by the department of public health and human services, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction of $2,000 by which the adjusted gross income of the taxpayer for the ~~taxable~~ tax year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a ~~taxable~~ tax year and to $10,000 total for two or more family members in a ~~taxable~~ tax year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a ~~taxable~~ tax year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

Section 16. Section 15-30-129, MCA, is amended to read:

"15-30-129. Tax credit for providing disability insurance for employees. ~~There~~ Except as provided in [section 1], there is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. The tax credit must be computed in accordance with the provisions of 15-31-132."

Section 17. Section 15-30-130, MCA, is amended to read:

"15-30-130. Credit for day-care facilities. ~~There~~ Except as provided in [section 1], there is a credit against the taxes otherwise due under this chapter allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property to be used primarily as a day-care facility. The credit must be computed in accordance with the provisions of 15-31-133."

Section 18. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax ~~shall be~~ is imposed upon either the fiduciaries or the beneficiaries of estates and trusts as ~~hereinafter~~ provided in this section, except to the extent ~~such~~ that the estates and trusts ~~shall be~~ are held for educational, charitable, or religious purposes~~,~~. ~~which~~ The tax ~~shall~~ must be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; and

(d) income ~~which~~ that is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary or beneficiary responsible for payment of the tax imposed by this section may elect to determine the tax liability of the estate or trust as provided in [sections 1 through 4].

(3) The fiduciary ~~shall be~~ is responsible for making the return of income for the estate or trust for which ~~he~~ the fiduciary acts, whether the fiduciary or the beneficiaries are ~~taxable~~ responsible for the payment of the tax with reference to the income of ~~such~~ the estate or trust. In cases under subsections ~~(a) and (d) of subsection (1)~~ (1)(a) and (1)(d), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the ~~taxable~~ tax year for which the return is made.

~~(3)~~(4) In cases under subsections ~~(a), (b), and (c) of subsection (1)~~ (1)(a), (1)(b), and (1)(c), the tax ~~shall~~ must be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and ~~shall~~ must be paid by the fiduciary. If the taxpayer's net income for the ~~taxable~~ tax year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then ~~his~~ the taxpayer's distributive share of the net income of the estate or trust for any accounting period of ~~such~~ the estate or trust ending within the fiscal or calendar year ~~shall~~ must be computed upon the basis on which ~~such~~ the beneficiary's net income is computed. In ~~such~~ those cases, a nonresident beneficiary ~~not a resident shall be~~ is taxable with respect to ~~his~~ the beneficiary's income derived through ~~such~~ the estate or trust only to the extent provided in 15-30-131 for ~~individuals other than residents~~ nonresidents.

~~(4)~~(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of ~~his~~ the employer's employees, to which contributions are made by ~~such~~ the employer or employees, or both, for the purpose of distributing to ~~such~~ the employees the earnings and principal of the fund accumulated by the trust in accordance with ~~such~~ the plan, ~~shall~~ are not ~~be~~ taxable under this section~~,~~. ~~but~~ However, any amount contributed to ~~such~~ the fund by the employer and all earnings of ~~such~~ the fund ~~shall~~ must be included in computing the income of the distributee in the year in which distributed or made available to ~~him~~ distributee.

~~(5)~~(6) ~~Where~~ If any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, ~~(~~except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction~~)~~, or to the payment of premiums upon policies of life insurance under which the grantor is the

beneficiary, ~~such~~ then that part of the income of the trust ~~shall~~ must be included in computing the net income of the grantor."

Section 19. Section 15-30-137, MCA, is amended to read:

"15-30-137. Determination of tax of estates and trusts. The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103 or [section 3]. ~~Credits~~ Except as provided in [section 1], credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

Section 20. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $3,560, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $7,120, as adjusted under the provisions of subsection (6), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by $1,900, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable under 15-30-103 or [section 3] and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after

crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-323 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(7) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 21. Section 15-30-154, MCA, is amended to read:

"15-30-154. Income tax deduction for contribution to veterans' programs. (1) ~~A~~ Except as provided in [section 1], a taxpayer who itemizes deductions under 15-30-121 in filing an individual or a joint income tax return may, in computing net income, claim a deduction for donations to the veterans' services account established in 10-2-112(1), the state veterans' cemetery program pursuant to 10-2-603, or any surcharge paid pursuant to 10-2-114 unless the amount is included as a deduction under 15-30-121(1)(a).

(2) A taxpayer may enclose a separate check or other payment to contribute to the veterans' special revenue accounts, established in 10-2-112(1) and 10-2-603 and count that deduction from taxes for the year in which the donation was made.

(3) The department shall provide a form to identify the deduction, and the contribution must be attached to the form.

(4) All money received pursuant to subsection (1) must be forwarded upon receipt by the department to the state treasurer for deposit in the veterans' services account established in 10-2-112(1) or to the special revenue account established in 10-2-603. If the taxpayer does not specify to which fund the contribution is intended to go, the department shall deposit the money in the veterans' services account established in

10-2-112(1). The department may not make deductions for administrative expenses in handling these donations."

Section 22. Section 15-30-156, MCA, is amended to read:

"15-30-156. Deduction for contributions to child abuse and neglect prevention program. ~~A~~ Except as provided in [section 1], a taxpayer filing an individual income tax return who ~~does not elect to take the standard deduction provided for in 15-30-122~~ itemizes deductions under 15-30-121 may, in computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the ~~taxable~~ tax year for which the return is filed, ~~he~~ the taxpayer may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with 15-30-144, ~~he~~ the taxpayer may elect to take a deduction for the amount of the contribution and apply the deduction in the taxable year for which he is filing the return."

Section 23. Section 15-30-163, MCA, is amended to read:

"15-30-163. Credit for contributions to university system or private college foundations. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a tax credit against taxes imposed by 15-30-103, [section 3], or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to any of the general endowment funds of the Montana university system foundations or a general endowment fund of a Montana private college or its foundation. The maximum credit that a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization that is created exclusively for the benefit of any unit of the Montana university system or a Montana private college and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers baccalaureate degree level education and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education."

Section 24. Section 15-30-164, MCA, is amended to read:

"15-30-164. Credit for alternative fuel motor vehicle conversion. (1) (a) Except as provided in [section 1] and subsection (1)(b) of this section, an individual, a corporation, a partnership, or a small business corporation as defined in 15-30-1101 is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred but the credit may not exceed:

(a) $500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) $1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any combination of them.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method."

Section 25. Section 15-30-166, MCA, is amended to read:

"15-30-166. (Temporary) Credit for contributions to qualified endowment -- recapture of credit -- deduction included as income. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103,

[section 3], or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(4) If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:

(a) include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's individual income tax or corporation license tax; and

(b) increase the amount of tax due under 15-30-103, [section 3], or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005.)"

Section 26. Section 15-30-180, MCA, is amended to read:

"15-30-180. (Temporary) Credit for preservation of historic property. (1) ~~There~~ Except as provided in [section 1], there is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) (a) ~~As~~ Except as provided in [section 1], as an alternative to the credit allowed in subsection (1), there is allowed as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the cost of creating the conservation easement and the diminution in the value of a historically significant property, including buildings and structures, that may result from a contract that places a conservation easement on the property if:

(i) the conservation easement holder is a qualified private organization as defined in 76-6-104;

(ii) the owner of the property is obligated by the contract creating the easement to maintain and preserve the property to retain its historical significance and characteristics for a period of not less than 29 years; and

(iii) the state historic preservation officer, provided for in 2-15-1512, verifies that a property is listed on the national register of historic places or that the property is historically valuable.

(b) For the purposes of this section, property is historically valuable if the property has, as certified by the state historic preservation office, significant qualities reflecting American history, architecture, engineering, or culture that was achieved prior to the last 50 years and the property possesses integrity of location, design, setting, materials, and workmanship and:

(i) is associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;

(ii) is associated with the lives of persons significant in our past;

(iii) embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or

(iv) has yielded, or may be likely to yield, information important in history.

(c) In addition to any of the tax credit allowed in subsection (2)(a), the owner of a historically significant property, including buildings and structures, that is the subject of a conservation easement contract may take as a credit against the taxes imposed by 15-30-103 an amount equal to 20% of the amount spent by the owner for the direct cost of the protection and the preservation of the property if the preservation efforts are approved as reasonable and necessary by the conservation easement holder. The tax credit may not exceed $25,000 a year.

(3) The maximum tax credit that may be taken under subsection (2) for each historically significant property is $150,000.

(4) The credit allowed by subsection (2) may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsection (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 6 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(5) A person may not take a credit against taxes due in any 1 year under both subsection (1) and (2).

(6) The credit allowed in subsection (1) may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

(7) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit allowed under subsection (4). (Terminates December 31, 2011--sec. 3, Ch. 538, L. 2001.)

15-30-180. (Effective January 1, 2012) Credit for preservation of historic buildings. (1) ~~There~~ Except as provided in [section 1], there is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in 15-31-151.

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

(3) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit allowed under subsection (4)."

Section 27. Section 15-30-182, MCA, is amended to read:

"15-30-182. Empowerment zone new employees -- tax credit. (1) ~~There~~ Except as provided in [section 1], there is a credit for taxes due under 15-30-103 for an employer for each new employee at a business in an empowerment zone created pursuant to Title 7, chapter 21, part 37. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in 7-21-3710.

(2) The amount of the credit for each qualifying employee is:

1st year of employment	$500
2nd year of employment	$1,000
3rd year of employment	$1,500

(3) (a) ~~If~~ Except as provided in subsection (3)(b), if the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(b) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward or carry back any unused portion of the credit allowed under subsection (2)."

Section 28. Section 15-30-183, MCA, is amended to read:

"15-30-183. Capital gains credit. An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 or [section 3] in an amount equal to ~~1% of the taxpayer's net capital gains for tax years 2005 and~~

~~2006 and~~ 2% of the taxpayer's net capital gains ~~for tax years beginning after 2006,~~ as shown on the taxpayer's individual income tax return filed pursuant to 15-30-142. The credit allowed under this section may not exceed the taxpayer's income tax liability."

Section 29. Section 15-30-184, MCA, is amended to read:

"15-30-184. Equity capital tax credit. ~~There~~ Except as provided in [section 1], there is allowed a credit against taxes otherwise due under this chapter as provided in Title 90, chapter 10."

Section 30. Section 15-30-185, MCA, is amended to read:

"15-30-185. Tax credit for health insurance premiums paid -- eligible small employers -- pass-through entities. (1) There is a tax credit, determined under Title 33, chapter 22, part 20, for eligible small employers who are individuals against the taxes imposed in 15-30-103 or [section 3] for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan as defined in 33-22-2002.

(2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes."

Section 31. Section 15-30-186, MCA, is amended to read:

"15-30-186. Credit for dependent care assistance and referral services. (1) ~~There~~ Except as provided in [section 1], there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of 15-31-131.

(2) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care. The credit must be computed in accordance with the provisions of 15-31-131.

(3) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit."

Section 32. Section 15-30-187, MCA, is amended to read:

"15-30-187. (Temporary) Credit for contributions to developmental disability services account. (1) ~~An~~ Except as provided in [section 1], an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 30% of the amount donated by the taxpayer during the year to the developmental disability services account established in 53-20-171. The maximum credit that may be claimed by the taxpayer is $10,000. The credit may not exceed the taxpayer's income tax liability. A taxpayer claiming a credit under this section may not claim a deduction under 15-30-121(1), 15-30-136(2), or 15-31-114 for the contribution for which a credit is claimed.

(2) There is no carryback or carryforward of the credit provided for in this section. The credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method. (Terminates January 1, 2008--sec. 1, Ch. 338, L. 2005.)"

Section 33. Section 15-30-189, MCA, is amended to read:

"15-30-189. Tax credit for physician practicing in rural area. ~~A~~ Except as provided in [section 1], a licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of $5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his practice for at least 9 months of the ~~taxable~~ tax year in which the credit is claimed."

Section 34. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) (a) "Employee" means:

(i) an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(ii) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(iii) an officer of a corporation;

(iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers,

and other supervisory personnel.

(b) The term does not include a sole proprietor performing services for the sole proprietorship.

(2) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;

(b) any individual or organization that has or had in its employ one or more individuals performing services for it within this state, including:

(i) a state government and any of its political subdivisions or instrumentalities;

(ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability company, or domestic or foreign corporation;

(iii) a receiver, trustee, including a trustee in bankruptcy, or the trustee's successor; or

(iv) a legal representative of a deceased person; or

(c) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes, or under Title 39, chapter 71, for workers' compensation purposes.

(3) "Lookback period" means the 12-month period ending the preceding June 30.

(4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the member of a single-member limited liability company that is a disregarded entity if the member is an individual.

(5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of the Internal Revenue Code, 26 U.S.C. 3401.

(b) The term does not include:

(i) tips and gratuities exempt from taxation under 15-30-111;

(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-111;

(iii) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-101, except the amount that is included under 15-30-101(10)(b); or

(iv) any amount paid a sole proprietor. (Subsection (5)(b)(i) terminates on occurrence of contingency--sec. 3. Ch. 634, L. 1983.)"

Section 35. Section 15-30-313, MCA, is amended to read:

"15-30-313. Deferment of taxes for person in military service -- filing of return. (1) The collection from a person in the military service, as defined by section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, of the tax imposed by 15-30-103 or [section 3], whether due prior to or during the person's period of military service, must be deferred for not more than 180 days after the termination of the person's period of military service if the person's ability to pay the tax is materially impaired by reason of military service.

(2) Interest and penalty on any amount of tax that is deferred for any period under 15-30-314 or this section may not accrue for the period of deferment by reason of nonpayment. The running of any statute of limitations against the payment of the tax by any lawful means must be suspended for the period of military service of any person for whom the collection of the tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

(3) In accordance with the provisions of section 7508 of the Internal Revenue Code, 26 U.S.C. 7508, the individual income tax return of a person, and the person's spouse, serving in a combat zone or participating in a contingency operation is due on or before 180 days after the time of disregarded service plus the disregarded period of qualified hospitalization attributable to an injury suffered while serving in the combat zone or contingency operation."

Section 36. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, member, or other owner who:

(a) is a nonresident individual, a foreign C. corporation, or a pass-through entity whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, member, or other owner; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103 or, if the participant has elected to be taxed under the alternative method in [sections 1 through 4], using the tax rates specified in [section 3] on the sum obtained by subtracting the allowable standard deduction for a single individual and one

exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments and be subject to the underpayment interest as prescribed by 15-30-241(5)(a) computed on the composite tax liability included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403.

(6) The composite tax is in lieu of the taxes imposed under:

(a) 15-30-103, [section 3], and 15-30-105;

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 37. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. Consent or withholding. (1) A pass-through entity that is required to file an information

return as provided in 15-30-1102 and that has a partner, shareholder, member, or other owner who is a nonresident individual, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity shall, on or before the due date, including extensions, for the information return:

(a) with respect to any partner, shareholder, member, or other owner who is a nonresident individual:

(i) file a composite return;

(ii) file an agreement of the individual nonresident to:

(A) file a return in accordance with the provisions of 15-30-142;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 or, if the partner, shareholder, member, or other owner has elected to be taxed under the alternative method in [sections 1 through 4], the highest marginal tax rate in effect under [section 3] multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return;

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of corporation license and income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source

income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(a)(iii) must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.

(3) Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii) from the partner, shareholder, member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) ~~Nothing in~~ The provisions of this section may not be construed as modifying the provisions of Article IV(18) of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

Section 38. Section 15-31-131, MCA, is amended to read:

"15-31-131. Credit for dependent care assistance and referral services. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

(2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by the employer during the tax year, but the credit may not exceed $1,575 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or incurred in the tax year.

(4) An amount paid or incurred during the tax year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code, 26 U.S.C. 129(c)(1) or (c)(2).

(5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(7) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(8) ~~Any~~ Except as provided in subsection (9)(b), any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(9) (a) ~~If~~ Except as provided in subsection (9)(b), if the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(b) A shareholder who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2007, may not carry forward any unused portion of the credit. However, a credit taken by an S. corporation on behalf of its shareholders must be allocated to a shareholder who has elected to determine tax liability under the provisions of [sections 1 through 4] as if the shareholder were eligible for the credit.

(10) For purposes of the credit allowed under subsection (1) or (3):

(a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C.

129(e), apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state."

Section 39. Section 15-31-133, MCA, is amended to read:

"15-31-133. Credit for day-care facilities. (1) ~~There~~ Except as provided in subsection (13), there is a credit against the taxes otherwise due under this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal to:

(a) the amount of the day-care facility credit determined under subsection (2); and

(b) any day-care facility tax credit carryforwards.

(2) The credit allowed under subsection (1) is the lesser of:

(a) $2,500, multiplied by the number of dependents that the day-care facility is designed to accommodate at the end of the first tax year for which credit is first claimed;

(b) 15% of the cost of the acquisition, construction, reconstruction, renovation, or other improvement; or

(c) $50,000.

(3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

(a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated as a day-care facility and with whom the employer contracts to make day-care assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes; or

(b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated by the employer, or a combination of employers, to provide day-care assistance to the employees of the employer under a program or programs, and the program or programs are excluded, or partially excluded, under 26 U.S.C. 129 from the income of the employee for federal tax purposes.

(4) To qualify for the credit allowed under subsection (1), the following conditions apply:

(a) The property must be in actual use in Montana as a day-care facility on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(b) Day-care services assisted by the employer must take place on the property on the last day of the tax year for which the credit or any carryforward amount of the credit is claimed.

(c) The person operating the day-care facility must hold a current license or registration certificate under Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1) is claimed.

(d) The day-care facility must accommodate six or more children.

(e) The day-care facility must be placed in operation before January 1, 2006.

(5) The total amount of the costs upon which the credit allowed under subsection (1) is based and the total amount of the credit must be determined by the employer, subject to rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated, or otherwise improved is first placed in operation as a day-care facility.

(6) The amount paid or incurred by the employer upon which the credit allowed under subsection (1) is based must be excluded from the income of an employee subject to the limitations provided in 26 U.S.C. 129(b).

(7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the first tax year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each succeeding tax year, not to exceed 9 tax years.

(8) Except as provided in subsections (4)(a) and (4)(b) and subject to subsection (13), if the tax credit allowed under subsection (1) exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years, except that a carryforward amount is not allowed beyond the period allowed for the credit as provided in subsection (7).

(9) The provisions of this section do not affect the computation of depreciation or basis for a day-care facility. However, if the credit allowed under this section is claimed, the amount of any deduction that is allowed or allowable under this chapter for the amounts paid or incurred, or upon which the credit is based, must be reduced by the dollar amount of the credit allowed.

(10) The department shall require evidence from the taxpayer that the person operating the day-care facility on the date that the taxpayer's tax year ends is licensed or registered to operate the facility. The evidence must accompany the tax return in which any amount of tax credit allowed under this section is claimed. If the evidence is not furnished, the credit is not allowed for the tax year for which the evidence is not furnished. Upon request of the department, the department of public health and human services shall report to the department on whether the day-care facility was operated as a licensed or registered day-care facility on the last day of the tax year of the person claiming the credit.

(11) The employer must meet any other requirements or furnish any information to the department that the department requires under rules adopted by the department to carry out the purposes of this section.

(12) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(13) A shareholder or partner who elects to be taxed under the alternative method in [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2007, may not carry forward any unused portion of the credit. However, a credit taken by a small business corporation or a partnership under this section must be allocated to the shareholder or partner as if the shareholder, owner, or partner were eligible for the credit.

~~(13)~~(14) For purposes of the credit allowed under subsection (1):

(a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable; and

(b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state."

Section 40. Section 15-31-134, MCA, is amended to read:

"15-31-134. Empowerment zone new employees -- tax credit. (1) ~~There~~ Except as provided in subsection (5), there is a credit for taxes due under 15-31-121 or 15-31-122 for an employer for each new employee at a business in an empowerment zone created pursuant to Title 7, chapter 21, part 37. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in 7-21-3710.

(2) The amount of the credit for each qualifying employee is:

1st year of employment	$500
2nd year of employment	$1,000
3rd year of employment	$1,500

(3) ~~If~~ Subject to subsection (5), if the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or

partners using the same proportion as used to report the entity's income or loss.

(5) A shareholder, an owner, or a partner who elects to be taxed under the alternative method in [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2007, may not carry forward or carry back any unused portion of the credit. However, a credit taken by a small business corporation, a pass-through entity, or a partnership under this section must be allocated to the shareholder, owner, or partner as if the shareholder, owner, or partner were eligible for the credit."

Section 41. Section 15-31-137, MCA, is amended to read:

"15-31-137. Small business corporation and partnership credit for alternative fuel conversion. (1) If equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are claimed as a credit under 15-30-164 by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

(2) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under 15-30-164. However, a credit taken by a small business corporation or a partnership on behalf of its shareholders or members must be allocated to the shareholder or partner who has elected to determine tax liability under the provisions of [sections 1 through 4] as if the shareholder or partner were eligible for the credit."

Section 42. Section 15-31-151, MCA, is amended to read:

"15-31-151. Credit for preservation of historic buildings. (1) (a) ~~There~~ Except as provided in subsection (4), there is allowed as a credit against the taxes imposed by ~~15-31-101, 15-31-121, and 15-31-122~~ this chapter a percentage of the credit allowed for qualified rehabilitation expenditures, with respect to any certified historic building located in Montana, as provided in 26 U.S.C. 47 or as that section may be renumbered or amended.

(b) The amount of the credit allowed for a tax year is 25% of the amount of the credit determined under 26 U.S.C. 47(a)(2) or as that section may be renumbered or amended.

(2) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to

the current tax year's credit is, except as provided in subsection (4), a credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(3) If the credit under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

(4) A shareholder or partner who elects to be taxed under the alternative method in [sections 1 through 4] may not claim the credit under this section and, for tax years beginning after December 31, 2007, may not carry forward any unused portion of the credit. However, a credit taken by a small business corporation or a partnership under this section must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 43. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment -- recapture of credit -- deduction included as income. (1) A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member of a limited liability company may claim in a year is $10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) (a) If during any tax year a charitable gift is recovered by the small business corporation, partnership, or limited liability company, the entity shall include as income the amount deducted in any prior year that is attributable to the charitable gift.

(b) In the tax year that a charitable gift is recovered, each shareholder, partner, or member shall increase

the amount of tax due under 15-30-103, [section 3], or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005.)"

Section 44. Section 15-32-109, MCA, is amended to read:

"15-32-109. Credit for energy-conserving expenditures. (1) ~~Subject~~ Except as provided in [section 1] and subject to the restrictions of subsection (2) of this section, a resident individual taxpayer may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed $500.

(2) The credit under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104."

Section 45. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations. (1) ~~A~~ Except as provided in [section 1] and subsection (2)(b) of this section, a resident individual taxpayer or a person constructing a new residence who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling or in a residence constructed by the taxpayer is entitled to claim a tax credit against the taxpayer's tax liability under Title 15, chapter 30 or 31, for a portion of the installation costs of the system, not to exceed $1,500. Only one credit may be claimed for a residence.

(2) (a) ~~The~~ Except as provided in subsection (2)(b), the amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under Title 15, chapter 30 or 31, for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(b) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit allowed under this section.

(3) A credit is not allowed under this section for expenditures claimed as a deduction under 15-32-103.

~~(2)~~(4) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor."

Section 46. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit -- to whom available. (1) ~~A~~ Except as provided in [section 1], a resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low-emission wood or biomass combustion device, as defined in 15-32-102, in the taxpayer's principal dwelling after December 31, 2001, is entitled to claim a tax credit in an amount equal to the cost of the system, including the installation costs, not to exceed $500, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

Section 47. Section 15-32-202, MCA, is amended to read:

"15-32-202. ~~Taxable~~ Tax years in which credit may be claimed -- carryover. (1) The tax credit is to be deducted from the taxpayer's income tax liability for the ~~taxable~~ tax year in which the energy system was acquired by the taxpayer. ~~If~~ Except as provided in subsection (2), if the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. ~~Notwithstanding the foregoing provision, no~~ However, the tax credit may not be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

(2) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability

under the provisions of [sections 1 through 4] may not carry forward any unused portion of the credit allowed under subsection (1)."

Section 48. Section 15-32-303, MCA, is amended to read:

"15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may, except as provided in [section 1], deduct expenditures for organic fertilizer and inorganic fertilizer produced as a byproduct produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

Section 49. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit -- alternative energy systems. (1) ~~An~~ Except as provided in [section 1] and subsection (4) of this section, an individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of $5,000 or more in property that is depreciable under the Internal Revenue Code for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 15-6-225, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

(4) A shareholder of a small business corporation or a partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 50. Section 15-32-404, MCA, is amended to read:

"15-32-404. Carryover of credit. (1) ~~The~~ Except as provided in subsection (3), the tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system.

(3) For tax years beginning after December 31, 2007, a shareholder or a partner who elects to determine tax liability under [sections 1 through 4] may not carry forward any unused portion of a credit allowed under 15-32-402."

Section 51. Section 15-32-602, MCA, is amended to read:

"15-32-602. (Temporary) Amount and duration of credit -- how claimed. (1) ~~An~~ Except as provided in [section 1], an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect or process reclaimable material or to manufacture a product from reclaimed material, if the taxpayer qualifies under 15-32-603.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under 15-32-603 is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to collect or process reclaimable material or to manufacture a product from reclaimed material only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is determined according to the following schedule:

(a) 25% of the cost of the property on the first $250,000 invested;

(b) 15% of the cost of the property on the next $250,000 invested; and

(c) 5% of the cost of the property on the next $500,000 invested.

(4) A credit may not be claimed for investments in depreciable property in excess of $1 million. (Terminates December 31, 2011--secs. 6, 8, Ch. 569, L. 2005.)"

Section 52. Section 15-32-603, MCA, is amended to read:

"15-32-603. (Temporary) Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material. (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of

reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(3) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(4) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(5) (a) ~~If~~ Subject to subsection (5)(b), if the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(b) A shareholder or partner who elects to determine the shareholder's tax liability under the provisions of [sections 1 through 4] may not claim the credit allowed in this part. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit. (Terminates December 31, 2011--secs. 6, 8, Ch. 569, L. 2005.)"

Section 53. Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. ~~In~~ Except as provided in [section 1], in addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 2011--secs. 6, 8, Ch. 569, L. 2005.)"

Section 54. Section 15-32-701, MCA, is amended to read:

"15-32-701. Oilseed crush facility -- tax credit. (1) ~~An~~ Except as provided in [section 1] and subject to subsection (9) of this section, an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property in Montana to crush oilseed crops for purposes of biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the year in which the property was purchased.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the property, up to a total of $500,000 for property invested in a facility. The credit must be claimed in the tax year in which the facility begins processing oilseed or manufacturing a product from oilseed.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to crush oilseed:

(a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture a product from oilseed and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes oilseed or that manufactures a product from crushed oilseed.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been processing oilseed or manufacturing a product from oilseed during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility in which property is installed and for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 55. Section 15-32-702, MCA, is amended to read:

"15-32-702. Biodiesel production facility tax credit. (1) ~~An~~ Except as provided in [section 1] and subject to subsection (9) of this section, an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of constructing and equipping a facility in Montana to be used for biodiesel production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of construction of the facility and for each item of property purchased to produce biodiesel only in the year in which the facility is in production.

(3) The amount of the credit that may be claimed under this section for investments in depreciable property is 15% of the cost of the facility or the property installed in the facility. The credit must be claimed in the

tax year in which the facility begins production.

(4) The following requirements must be met to be entitled to a tax credit for investment in property to manufacture biodiesel:

(a) The investment must be for depreciable property used primarily to manufacture biodiesel and must be operating before January 1, 2010.

(b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that manufactures biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and must have been manufacturing biodiesel during the tax year for which the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel production facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit.

~~(9)~~(10) As used in this section, "biodiesel" has the meaning provided in 15-70-301."

Section 56. Section 15-32-703, MCA, is amended to read:

"15-32-703. Biodiesel blending and storage tax credit -- recapture -- report to interim committee. (1) ~~An~~ Except as provided in [section 1] and subject to subsection (9) of this section, an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the cost of storage and blending equipment to be used for blending biodiesel with petroleum diesel.

(2) Subject to subsection (4), a special fuel distributor or an owner or operator of a motor fuel outlet qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the cost of installing storage and blending equipment only in the year in which the taxpayer begins blending biodiesel fuel.

(3) (a) The amount of the credit that may be claimed by a distributor under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed $52,500. The credit must be claimed in the tax year in which the distributor begins blending biodiesel for sale.

(b) The amount of the credit that may be claimed by an owner or operator of a motor fuel outlet under this section for investments in depreciable property is 15% of the cost of the storage and blending equipment. The amount of the credit may not exceed $7,500. The credit must be claimed in the tax year in which the retailer begins blending of biodiesel for fuel.

(4) The following requirements must be met in order to be entitled to a tax credit for investment in property to blend biodiesel:

(a) The investment must be for depreciable property used primarily to blend biodiesel made entirely from Montana-produced ingredients with petroleum diesel.

(b) Sales of biodiesel must be at least 2% of the taxpayer's total diesel sales by the end of the third year following the tax year in which the credit is claimed.

(c) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that blends biodiesel.

(ii) If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(d) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(c), and must have been blending biodiesel during the tax year for which

the credit is claimed.

(5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which a credit is claimed ceases operations within 5 years of the claiming of a credit under this section or if the taxpayer claiming the credit fails to satisfy the conditions of subsection (4)(b), the credit is subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of recapture.

(7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel blending facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

(9) A shareholder or partner who elects to determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit.

~~(9)~~(10) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

~~(10)~~(11) ~~Beginning after January 1, 2006, the~~ The department shall report to the revenue and transportation interim committee at least once each year regarding the number and type of taxpayers claiming the credit under this section, the total amount of the credit claimed, and the department's cost associated with administering the credit."

Section 57. Section 15-61-202, MCA, is amended to read:

"15-61-202. Tax exemption -- conditions. (1) (a) Except as provided in [section 1] and this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee

or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(b) If an employee or account holder elects to determine the employee's or account holder's tax liability under the provisions of [sections 1 through 4], the amount of the principal and income in the account before the tax year in which the election is effective may be retained tax-free. Unused amounts withdrawn from the account for eligible medical expenses are exempt from taxation. Withdrawal of funds from the account for purposes other than medical expenses or long-term care is subject to the provisions of 15-61-203.

(2) An employee or account holder may exclude as an annual contribution in 1 year not more than $3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. An employee or account holder who deposits more than $3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account

holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

Section 58. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. (1) ~~An~~ Except as provided in [section 1] and this section, an individual who contributes to one or more accounts in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(7), by the total amount of the contributions, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident.

(2) If a person elects to determine tax liability under the provisions of [sections 1 through 4], the amount of the contribution and earnings in the account at the time of the election may be retained tax-free. Unused amounts withdrawn from the account for eligible qualified higher education expenses are exempt from taxation. A nonqualified withdrawal of funds from the account is subject to the provisions of 15-62-208."

Section 59. Section 15-62-208, MCA, is amended to read:

"15-62-208. Tax on certain withdrawals of deductible contributions. (1) There is a recapture tax at a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that reduced adjusted gross income under 15-30-111~~(8)~~(7).

(2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross income, all withdrawals must be allocated between income and contributions in accordance with the principles applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions, if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must be treated as first derived from contributions that reduced adjusted gross income, to the extent of the contributions, and then to contributions that did not reduce adjusted gross income.

(3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account

owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(b) The department may require withholding on recapturable withdrawals from an account that was at one time owned by a Montana resident if the account owner is not a Montana resident at the time of the withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

(4) For the purposes of this section, all contributions made to accounts by residents of Montana are presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary.

(5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

(a) April 30, 2001; or

(b) the date that is 3 years prior to the date of the withdrawal or distribution.

(6) The department shall use all means available for the administration and enforcement of income tax laws in the administration and enforcement of this section."

Section 60. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption -- conditions. (1) (a) Except as provided in [section 1] and this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(b) If an account holder elects to determine the account holder's tax liability under the provisions of [sections 1 through 4], the amount of the principal and income in the account at the time of the election may be

retained tax-free. Unused amounts withdrawn from the account for eligible costs are exempt from taxation. Withdrawal of funds from the account for purposes other than eligible costs is subject to the provisions of 15-63-203.

(2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to $3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to $6,000.

(c) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must

be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

(9) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated pay-on-death beneficiary as provided in 72-6-223."

Section 61. Section 17-6-316, MCA, is amended to read:

"17-6-316. Economic development loan -- infrastructure tax credit. (1) A loan made pursuant to 17-6-309(2) must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan must be made to a local government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to 17-6-309(2) qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to 17-6-309(2) and this section may not be made until the board is satisfied that the condition in 17-6-309(2) will be met. If the condition contained in 17-6-309(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to 17-6-309(2) and subsection (1) of this section is, except as provided in [section 1], entitled to a credit against taxes due under Title 15, chapter 30 or 31, for the portion of the fees attributable to the use of the infrastructure.

(4) (a) ~~The~~ Except as provided in subsection (4)(b), the total amount of tax credit claimed may not exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years.

(b) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward or carry back any unused portion of the credit.

(5) A shareholder of a small business corporation, as defined in 15-30-1101, or a partner who elects to

determine tax liability under the provisions of [sections 1 through 4] may not claim the credit under this section. However, the credit must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit."

Section 62. Section 33-22-2007, MCA, is amended to read:

"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance payments. (1) An eligible small employer may:

(a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.

(2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).

(3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

(4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103, [section 3], or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103, [section 3], or 15-31-121.

(b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

(5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.

(6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.

(b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.

(c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

Section 63. Section 80-12-211, MCA, is amended to read:

"80-12-211. Income tax deduction for land sale to beginning farmers. ~~A~~ Except as provided in [section 1], a landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in ~~his~~ the landowner's taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, provided the transaction is approved by the authority for this purpose."

Section 64. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000; or

(b) a qualified Montana small business investment capital company a certified Montana small business investment capital company once it has been privately capitalized at a minimum level of $500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as a qualified Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) (a) The total amount of tax credits authorized for a single qualified capital company or a qualified

Montana small business investment capital company may not exceed $1,500,000, except that a qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. ~~In the event~~ If the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the ~~foregoing~~ limitation of this section.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to a qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by a qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to a qualified Montana small business investment capital company in accordance with this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in a qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as a qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as a qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation,

partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of $150,000 per taxpayer, except that, as applied to a qualified small business investment capital company, the maximum tax credit is $250,000 per taxpayer and the tax credit limitation relating to a capital investment in a qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. ~~The~~ Except as provided in [section 1], the credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined in 15-30-1101 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the ~~taxable~~ tax year in which the investment in a qualified Montana capital company or a qualified Montana small business investment capital company is made. ~~If~~ Except as provided in subjection (7)(c), if the amount of the tax credit exceeds the taxpayer's tax liability for the ~~taxable~~ tax year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current ~~taxable~~ tax year plus the amount of credit, if any, carried forward from a previous ~~taxable~~ tax year exceeds the taxpayer's tax liability for the current ~~taxable~~ tax year, the excess must be carried back as a credit to the 3 preceding ~~taxable~~ tax years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding ~~taxable~~ tax years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 ~~taxable~~ tax years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(c) For tax years beginning after December 31, 2007, a taxpayer who elects to determine tax liability under the provisions of [sections 1 through 4] may not carry forward or carry back any unused portion of the credit.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by

making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than $150,000, or not more than $250,000 in the case of a qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in a qualified Montana small business investment capital company."

Section 65. Section 90-10-303, MCA, is amended to read:

"90-10-303. Contingent, deferred tax credits. (1) (a) A total of $60 million of tax credits is available to certificate holders. The amount of tax credits certified for use may not exceed $25 million prior to January 1, 2009. No more than $12 million of tax credits may be claimed in a year.

(b) In calculating the $12 million of tax credits that may be claimed in a year, the board shall notify the department of revenue or the state auditor, as applicable, of all tax certificates presented for redemption in each year and the amount of taxes against which the board has determined the tax credits are to be applied.

(c) Tax credits must be allocated on a first-come, first-served basis.

(d) Expired tax credits do not count against the aggregate calculated in subsection (1)(b).

(2) A tax credit may not be claimed prior to July 1, 2010, or after July 1, 2031.

(3) Tax credits may be claimed or redeemed by a certificate holder only in accordance with conditions set forth in the certificate issued by the board.

(4) The certificate must state the amount of the tax credit and the tax year in which the tax credit may first be claimed or redeemed as provided in 90-10-304 and this section.

(5) Subject to subsection (2), a tax credit may be carried forward by the certificate holder for up to 12 years.

(6) (a) The amount of tax credits certified for use by investors in the Montana equity fund is limited to an amount that offsets a shortfall in the scheduled returns of invested capital and returns on invested capital at rates of return in the contract between the designated investor group and the investor as approved by the board.

(b) The certificate must contain the conditions for claiming a tax credit, including:

(i) the scheduled rate of return for the certificate holder and all predecessors of the certificate holder;

(ii) the formula by which a shortfall in returns of invested principal and interest is to be calculated;

(iii) the upper limit of tax credits available under the certificate; and

(iv) the dates by which the tax credits may be first redeemed and last redeemed.

(7) A certificate holder of a certificate may transfer the certificate and the associated tax credits.

(8) (a) ~~The~~ Except as provided in [section 1] and subject to subsection (8)(b) of this section, the tax credit of an investor group that is a partnership, a limited liability company taxed as a partnership, or an S. corporation may be claimed by the partner, member, or shareholder. The tax credit of an investor group that is an estate or trust may be claimed by the beneficiary. The amount of credit claimed by a partner, member, shareholder, or beneficiary must be the partner's, member's, shareholder's, or beneficiary's pro rata share of the earnings of the partnership, limited liability company, S. corporation, trust, or estate.

(b) A shareholder or partner who elects to be taxed under the provisions of [sections 1 through 4] may not claim the credit under this section. However, a credit taken by a small business corporation or a partnership under this section must be allocated to the shareholder or partner as if the shareholder or partner were eligible for the credit.

(9) The certificate must permit a person claiming an interest in a tax credit to record that interest.

(10) (a) A certificate is binding on the board and the department of revenue once capital is provided to the Montana equity fund.

(b) A certificate may not be modified, rescinded, or terminated, except that redemption as provided in 90-10-304 terminates a certificate."

NEW SECTION. **Section 66. State treasurer to determine excess of individual income tax collections to legislative estimates.** For the purposes of [section 3], beginning with the fiscal year that ends June 30, 2009, and for each fiscal year thereafter, the state treasurer shall certify to the secretary of state the amount by which individual income tax collections, exclusive of audit collections and amended returns attributable to a tax year that began before the tax year in which the fiscal year begins, exceeds the amount of individual income tax collections, exclusive of the amount attributable to audit collections, estimated by the legislature as provided in 5-5-227 and as adjusted by the state treasurer for individual income tax legislation in effect for that fiscal year. The certification must include the percentage amount by which actual individual income tax collections for that fiscal year are less than or greater than the amount estimated by the legislature. The state treasurer shall

notify the secretary of state, the department of revenue, the code commissioner, and the legislative fiscal division of this certification.

NEW SECTION. **Section 67. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through 4].

(2) [Section 66] is intended to be codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to [section 66].

NEW SECTION. **Section 68. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 69. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 70. Contingent voidness.** If the 60th legislature does not extend the termination date contained in section 6, Chapter 590, Laws of 2003, and in section 1, Chapter 338, Laws of 2005, related to the credit for contributions to the developmental disability services account under 15-30-187, then [section 1(4)(j) and section 32 of this act] are void.

NEW SECTION. **Section 71. Applicability.** [This act] applies to tax years beginning after December 31, 2007.

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